P.R. No. 1713/06
Presented by Shri Y. C. Tamrakar
dated 22/6/06
Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL No. 277 Of 2006

Appellant

1. Krishna Kumar Tiwari, aged about 45 years s/o Dwarika Prasad Tiwari r/o village Dhaniadoli, Tahsil Lormi, District Bilaspur (C.G)

Versus

Respondents

1. Itwari aged about 60 years s/o Basawan Marar r/o village Darwaja, Tahsil Mungeli, District Bilaspur (C.G)
2. State of Chhattisgarh – Through- Collector, District Bilaspur (C.G)

RETURNED COPY 22/6/06 CLERK H. C. G. BILASPUR

MEMO OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 277/... **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	15.01.2007 Appellant-Krishna Kumar Tiwari by Shri A.V.Sridhar, Advocate. State by Shri Akhil Agrawal, P.L. Heard on admission. The plaintiff/appellant is aggrieved by the judgment and decree dated 23.03.2006 passed in Civil Appeal No.25-A of 2005 by Additional District Judge, Mungeli, District Bilaspur wherein the dismissal of the suit by the Civil Judge Class-I, Mungeli on 7.5.2005 in Civil Suit No.13-A of 2001 was affirmed. 2. Brief facts of the case are that the plaintiff instituted a suit for possession after demolition of superstructure pleading that the suit land was the joint family property of the plaintiff. There was an oral partition in 1998 in which the suit land fell to the share of the plaintiff and was recorded in his name. Defendant has constructed a house over the suit land and was in unauthorized possession thereof. 3. The plaintiff also did not seek the relief of declaration of his title over the suit land. 4. The defendant resisted the claim on the ground that he was in long, uninterrupted adverse possession of the suit lands which his ancestor had received from the erstwhile ruler and had thus perfected his title over the same. 5. The Civil Judge, Class-I, Mungeli dismissed the suit on the ground that the plaintiff had failed to prove his title over the suit land and had led no documentary evidence evidencing partition or joint	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 277/... **सन् 200**6

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

possession over the suit land. Admittedly, the defendant was in possession of the suit lands. The plaintiff stated in cross-examination paragraph 3 that his ancestor had purchased the suit lands from Raja Garud Das. However, no documentary evidence thereof was filed. Thus, in the absence of any documentary evidence to show that the suit lands were purchased by the ancestor of the plaintiff from Raja Garud Das or that the joint possession of the plaintiff's family was recorded over the suit land, the lower Court dismissed the suit.

6. In First Appeal, the learned Appellate Court has affirmed the judgment and decree of the lower Court. I have perused the record of the Civil Suit No.13-A of 2001 and have also considered the evidence both documentary as well as oral on record. The plaintiff could succeed only on the strength of his title and not on any weakness in the defendant's case, who was admittedly in possession of the suit land. I am of the considered opinion that there is no legal documentary evidence to establish plaintiff/appellant's title over the suit land. Oral evidence as to source of plaintiff's title is also vague. The finding recorded by the lower Court as well as First Appellate Court that the plaintiff has failed to establish his title over the suit land is thus impeccable. Thus, no substantial question of law is involved in this appeal. As a result, this appeal is dismissed at the stage of admission. There shall be no order as to costs.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Ajani

P.T.O.